

COMMITTEE OF BAR EXAMINERS

OPEN SESSION AGENDA ITEM

AGENDA ITEM: JUNE 2014 – O-400

DATE: June 18, 2014

TO: Subcommittee on Educational Standards

FROM: George Leal, Director, Educational Standards

SUBJECT: Proposed Amendments to Guidelines Re Cumulative Bar Examination Pass Rates – Request to Circulate for Public Comment

BACKGROUND

Effective January 1, 2013, all California-accredited law schools (CALS) became subject to a new accreditation standard based upon a “minimum, cumulative bar examination pass rate” (MPR). As now required by Rule 4.160(M) of the *Accredited Law School Rules*, each CALS “must maintain a minimum, cumulative bar examination pass rate as determined and used by the Committee in the evaluation of the qualitative soundness a law school’s program of legal education.”

To enforce this new standard, the Committee also amended the *Guidelines for Accredited Law School Rules* by adopting two new Guidelines: Guidelines 12.1 and 12.2, which went into effect on January 1, 2013. Guideline 12.1 sets the current, minimum MPR at 40% and requires CALS to calculate and report their respective rates as a rolling, five-year annual percentage. As adopted, Guideline 12.1 each CALS is to calculate its respective MPR by dividing the total number of their graduates who take and pass the California Bar Examination (CBX) over the most recent five-year period of time, by the total number of graduates who take the CBX during this same period of time, at least once, whether or not they pass. Graduates who choose not to take the CBX are not counted in the calculation of a law school’s MPR.

As initially adopted, Guideline 12.2 required CALS to report their MPRs in their 2013 Annual Compliance Reports submitted last November. For any CALS that failed to report a MPR of at least 40%, the Committee could then have issued the law school a Notice of Noncompliance pursuant to Rule 4.170. The narrative to Guideline 12.2 also provided notice to CALS that if any failed to report a compliant MPR in its 2016 Annual Compliance Report, the Committee could place each such school on probation. If a school was placed on probation, and if it thereafter failed to meet the terms of its probation by the end of 2017, it would be subject to the loss of its accreditation.

The goal in adopting the MPR metric, along with each of the associated Guidelines, was to have all of the CALS calculate and report an accurate, consistent and verifiable MPR.

Soon after the adoption of Rule 4.160(M) and Guidelines 12.1 and 12.2, however, a number of CALS Deans expressed concern that the methodology described in Guideline 12.1 was unclear and ambiguous as to which administrations of the CBX, and which eligible graduates should be used to calculate and report their school's initial MPR. The Deans were also concerned that, as then adopted, Guideline 12.1 would lead to inaccurate and inconsistent reporting by one or more CALS.

The Committee deferred implementation of both Guidelines so that all such concerns could be addressed. As a result, the reporting obligation to calculate and report each law school's MPR in their 2013 Annual Compliance Report was deferred until proposed amendments to Guideline 12.1 and Guideline 12.2 could be adopted.

During its meeting on March 13, 2014, the Committee's Advisory Committee on California Accredited Law School Rules (RAC) proposed several amendments to both Guidelines that were intended to eliminate the ambiguity as to which CBX administrations of the CBX and which graduates needed to be counted to calculate an accurate MPR. The proposed amendments were considered by the Committee during its March 14, 2014 meeting and a period of public comment was authorized.

After their return from public comment, the Committee adopted all of the proposed amendments to Guideline 12.1 and Guideline 12.2, effective April 26, 2014. As adopted, CALS were to calculate and report their MPRs on a form to be prepared by staff on behalf of the Committee by July 1st. In an effort to draft the Committee's form to be used by each CALS to report their respective MPR by July 1st, staff discovered that the revised methodology now found in Guideline 12.1 was, unfortunately, internally inconsistent. The underlying problem was the adoption of the requirement that the "reporting period starts with the July administration of the California Bar Examination in the first year and ends with the February administration of the California Bar Examination in the same calendar year in which a MPR is reported."

In the hope of correcting the problems with the newly-adopted amendments to Guidelines 12.1 and 12.1, staff worked closely with the Chair of the RAC, Dean Heather Georgakis, to prepare further proposed amendments to resolve all of the issues discovered with the Guideline's current methodology.

Attached as Attachments A is a red-lined version of the proposed amendments to Guidelines 12.1 and 12.2 and the Committee's proposed reporting form.

DISCUSSION

The problem in starting with a February administration in the first year of a reporting period (July 1st of year one and ending June 30th of the fifth year) is that those who graduated during the initial half year (on or after July 1, 2008), in time to take the first administration of the CBX within the reporting period (February 2009), do not qualify to be used to calculate a school's MPR, whether or not they passed, since the February administration is expressly not among the ten that count. Similarly, at the other end of the reporting period, for those who graduate after July 1, 2013 and then take and pass the February 2014 administration, they too are not to be counted even though they took

the last administration within the reporting period. Thus, to avoid double counting, CALS will have the additional burden of not counting those graduates who passed the February 2014 administration but who did not graduate during the reporting period.

In addition to these anomalies, use of a July administration to start calculating a MPR results in a significant time lag since pass results for the first graduates to be counted are not available until the November of the year following the start of the reporting period. Finally, ending with a February administration also produces the anomaly of using an administration that falls eight months (with results available almost 11 months) after the end of each reporting period which ended on June 30th of the year before.

As now proposed, the five-year reporting period would start with CALS using the results of the very first CBX administration within each reporting period, a February administration, and it would end with the results of the last July administration that falls before the end of the reporting period's fifth year. To simplify the identification of those graduates to be counted within each five-year reporting period, the reporting period should start on August 1st of each year and end on July 31st. That time period better tracks the "academic year" and graduation dates of most of the CALS and ensures that the 10th and last CBX administration to be used will fall within the reporting period.

Next, as proposed, to shorten the delay in having each law school report on July 1st, the MPR reporting deadline should be changed to January 15th of calendar year after the reporting period and only eight weeks after the results become available for the last CBX administration to be counted. Finally, given the significant delay in having each CALS calculate and make a report of its initial MPR (for the suggested reporting period of August 1, 2008 through July 31st 2013) it is recommended that a one-time report be submitted by CALS on September 15, 2014, assuming the proposed amendments are adopted at the Committee's meeting in August after another period for public comment.

RECOMMENDATION

Subject to any additional input or additional amendments that the RAC may wish to offer, it is recommended that the Subcommittee recommend to the full Committee that the proposed amendments to Guidelines 12.1 and 12.2 of the *Guidelines for Accredited Law School Rules* be adopted in principle, subject to a 30-day public comment period.

PROPOSED MOTION

If the Subcommittee agrees, the following motion is suggested:

Move that the proposed amendments to Guidelines 12.1 and 12.2 of the *Guidelines for Accredited Law School Rules* as attached hereto be adopted in principle; that the proposed amendments be circulated for a 30-day public comment period; that the proposed amendments and any comments received be forwarded to the Committee's Advisory Committee on California Accredited Law School Rules for its review and comment; and that this matter be placed on the agenda for final consideration by the Committee during its August 2014 meeting.